

LA CORTE, BUNDY, VARADY & KINSELLA

ATTORNEYS AT LAW
989 BONNEL COURT
UNION, NEW JERSEY 07083
(908) 810-0500
FAX: (908) 810-0513

E-Mail: LBVKlaw@LBVKlaw.com

NICHOLAS S. LA CORTE (1911-1978)
GARY A. BUNDY
ROBERT F. VARADY **
CHRISTOPHER J. KINSELLA*

CHRISTINA M. DIPALO*

OF COUNSEL,
JOHN F. MALONE

*NY BAR
†CERTIFIED CIVIL TRIAL ATTORNEY

IN REPLY REFER TO FILE NO.

September 12, 2016

Honorable James B. Clarke, III
United States District Court
M.L.K., Jr., Federal Building
& U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: Wendell Kirkland, et al. vs. City of Linden, et al.
Civil Action No.: 2:12-cv-01196

Dear Magistrate Judge Clark:

This office represents defendant Louis DiLeo in the above-referenced case. After conferring with David Schwartz, counsel for defendant City of Linden, I write in advance of the status conference scheduled for September 14, 2106, to request that the court stay discovery and order the case to mediation with former Magistrate John Hughes or, in the alternative to set a short schedule to complete discovery so that the defendants can prepare and file dispositive motions.

As Your Honor may recall, as stated in my letter to the Court of August 11, 2016, the have parties agreed to mediate the case with Magistrate Hughes. By endorsement order of August 12, 2016, the Court determined to discuss mediation and a stay of discovery with the parties in the September 14, 2016 telephone conference.

Although the parties have agreed to mediate the case, the plaintiffs have recently moved to amend the complaint to add Linden Municipal Prosecutor Nicholas Scutari as a party, notwithstanding that the plaintiffs' claims accrued over five years ago. The plaintiff also moved to "amend" the complaint to "add new factual allegations" – not new claims- against former Judge DiLeo and the City of Linden. We believe the more appropriate approach would be to amend plaintiff's answers to interrogatories and supplement their response to defendants request for production of documents.

Although the plaintiffs were ordered to answer the City of Linden's interrogatories by June 30, 2016, no answers have been served and the plaintiffs made no requests of the court to extend the deadlines for

responding to discovery requests. Instead, there appears to be an interest by the plaintiffs in expanding the case which will inevitably add considerable delay in resolving this matter.

While I do not address whether the plaintiffs' have actually mounted a valid *Monell* claim here, the defendants believe that there is a significant likelihood that the complaint will ultimately be dismissed as against both defendants based on 11th Amendment immunity.

Therefore, in order to move this case toward a resolution, we respectfully request that one of two courses of action be ordered: that the motion to amend and discovery be stayed so the matter can proceed to mediation, or in the alternative, that all the plaintiffs answer all outstanding discovery requests by the City of Linden without further delay, and that the Court set a schedule for filing dispositive motions.

Very truly yours,

La Corte, Bundy, Varady & Kinsella

By: Robert F. Varady, Esq.
Robert F. Varady, Esq.

By: David A. Schwartz, Esq.
David A. Schwartz, Esq.

RFV:lgm

cc: Michael P. Rubas, Esq. (Via electronic filing only)

cc: David A. Schwartz, Esq. (Via electronic filing only)